

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KEVIN LAMAR PORTER,

Plaintiff,

v.

AMEZCUA, *et al.*,

Defendants.

Case No. 1:23-cv-01491-JLT-BAM (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS**

(Doc. 29)

Kevin Lamar Porter asserts he suffered violations of his civil rights while incarcerated at Corcoran State Prison and seeks to hold correctional officers liable pursuant to 42 U.S.C. § 1983. (*See generally* Doc. 28.) The magistrate judge screened the second amended complaint pursuant to 28 U.S.C. § 1915A and found Plaintiff stated cognizable claims against: (1) Amezcua for retaliation in violation of the First Amendment and the Bane Act; (2) Amezcua for excessive force in violation of the Eighth Amendment, battery and violation of the Bane Act, for slamming Plaintiff on the ground; (3) Amezcua, Chao, and John Does 1-5 for excessive force in violation of the Eighth Amendment, battery, and violation of the Bane Act for forcefully moving Plaintiff despite his complaints of severe pain; and (4) Amezcua, Chao, John Does 1-5, and Jane Does 1-2 for deliberate indifference to medical care in violation of the Eighth Amendment and a related state law claim for violation of the Bane Act. (Doc. 29 at 7-12.) However, the magistrate judge found other claims in the SAC are not cognizable and recommended they be dismissed for failure

1 to state claims upon which relief may be granted. (*Id.* at 12-13.)

2 The Court served the Findings and Recommendations on Plaintiff and notified him that
3 any objections were due within 14 days.¹ (Doc. 29 at 13.) The Court advised him that the “failure
4 to file objections within the specified time may result in the waiver of the ‘right to challenge the
5 magistrate’s factual findings’ on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39
6 (9th Cir. 2014).) Plaintiff did not file objections, and the time to do so has passed.

7 According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case.
8 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
9 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued on September 19, 2024 (Doc. 29), are
11 **ADOPTED** in full.
- 12 2. This action **SHALL** proceed on Plaintiff’s second amended complaint (Doc. 28) only
13 on the cognizable claims against:
 - 14 a. Defendant Amezcua for retaliation in violation of the First Amendment and a
15 related state law claim for violation of the Bane Act;
 - 16 b. Defendant Amezcua for excessive force in violation of the Eighth Amendment
17 and related state law claims for battery and violation of the Bane Act for
18 slamming Plaintiff on the ground;
 - 19 c. Defendants Amezcua, Chao, and John Does 1-5 for excessive force in violation
20 of the Eighth Amendment, battery, and violation of the Bane Act for forcefully
21 moving Plaintiff despite his complaints of severe pain; and
 - 22 d. Defendants Amezcua, Chao, John Does 1–5, and Jane Does 1-2 for deliberate
23 indifference to medical care in violation of the Eighth Amendment and a
24 related claim for violation of the Bane Act;
- 25 3. All other claims are **DISMISSED** from this action for failure to state claims upon
26 which relief may be granted.

27 ¹ After Plaintiff filed a notice of change of address, the Court re-served the Findings and Recommendations
28 at the new address and extended the deadline to file objections. (Doc. 30.)

1 4. This action is referred to the magistrate judge for further proceedings.

2
3 IT IS SO ORDERED.

4 Dated: **October 31, 2024**


UNITED STATES DISTRICT JUDGE